999

SUPREME COURT OF THE UNITED STATES.

No. 90.

ELEAZER CARVER, PLAINTIFF IN ERROR,

VS.

A. HYDE ET AL.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF MASSACHUSETTS.

INDEX.

	Original.	Print.
Writ of Error,	1	3
Declaration,	3	3
Issues joined—Verdict—Judgment,	7	5
Bill of Exceptions,	9	5
Clerk's Certificate,	24	12
Citation,	29	15
Service of Citation acknowledged,	31	15

S. D. Langtree, Print.

UNITED STATES, *ss:*

The President of the United States, to the judge of the Circuit Court holden in and for the district of Massachusetts, greeting: [L. S.]

Because that in the record and process, and also in the rendering of judgment in a suit before you, or some of you, between Eleazer Carver, plaintiff, and Joseph A. Hyde, George W. Bates, Samuel W. Bates, Philo Keith, Edwin Keith, Asa P. Keith, Asa Copeland, Ephraim H. Sprague, and Waldo Ames, defendants, in a plea of trespass on the case, a manifest error has intervened, to the great damage of the said Eleazer Carver, as in his complaint has been stated. And as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded, that, if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States, on the second Monday of January next, at Washington, being the present seat of the National Government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Honorable Roger B. Taney, Esq., chief justice of the said Supreme Court, at Washington aforesaid, this 9th day of October, in the year of our Lord one thousand eight hundred and forty-one, and of the independence of the United States the sixty-sixth.

FRANCIS BASSETT, *Clerk.*

UNITED STATES OF AMERICA,
Massachusetts District, ss:

At the Circuit Court of the United States for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Saturday, the fifteenth day of May, in the year of our Lord one thousand eight hundred and forty-one, before the Honorable Joseph Story, Associate Justice, John Davis, District Judge.

Eleazer Carver, of Bridgewater, in the county of Plymouth, in said district, manufacturer, *plaintiff*, vs. Joseph A. Hyde, George

W. Bates, Samuel W. Bates, Philo Keith, Edwin Keith, Asa P. Keith, Asa Copeland, Ephraim H. Sprague, and Waldo Ames, all of said Bridgewater, manufacturers, and copartners, under the firm of Bates and Hyde and Company, defendants, in a *plea* of trespass on the case, for that the plaintiff was the original and first inventor of a certain improvement in the ribs of cotton gins, in the letters patent hereinafter mentioned, fully described, the same being a new and useful improvement, which was not known or used before his said invention, and which was not at the time of his application for a patent, as hereinafter mentioned, in public use, or on sale with his consent or allowance; and the plaintiff being so as aforesaid the inventor thereof, and being also a citizen of the United States, on the twelfth day of June, eighteen hundred and thirty-eight, upon due application therefor, did obtain certain letters patent therefor, in due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of State, and countersigned by the Commissioner of Patents of the United States, bearing date the day and year last aforesaid, purporting to secure to him, his heirs, administrators, executors, or assigns, for the term of fourteen years from and after the date of the patent aforesaid, the full and exclusive right and liberty of making, using, and vending to others to be used, the said improvement, as by a certified copy of which patent here in court to be produced, will fully appear; the said original patent having been surrendered as hereinafter mentioned, and afterwards the specification of said improvement, contained in the schedule annexed to said patent, having been found to be defective, the plaintiff, on the sixteenth day of November, eighteen hundred and thirty-nine, upon due application therefor, and having surrendered his said patent, and otherwise complied with the requirements of law in that behalf, did obtain new letters patent for said improvement, in due form of law, under the seal of the Patent Office of the United States, signed by the then acting Secretary of State, and countersigned by the Commissioner of Patents of the United States, bearing date the day and year last aforesaid, whereby there was secured to him, his heirs, administrators or assigns, for the term of fourteen years from and after the twelfth day of June, one thousand eight hundred and thirty-eight, the full and exclusive right and liberty of making, using, and vending to others to be used, the said improvement as by the said letters patent last mentioned, here in court to be produced, will fully appear; and the plaintiff further says, that from the time of the granting to him of the said letters patent first above mentioned, hitherto he has made and vended to others to be used, the said improvement, to his great advantage and profit; yet the said Joseph A. Hyde, George W. Bates, Samuel W. Bates, Philo Keith, Edwin Keith, Asa P. Keith, Asa Copeland, Ephraim H. Sprague, and Waldo Ames, copartners as aforesaid, well knowing the premises, but contriving to injure the plaintiff, did, after the issuing

of the said letters patent secondly above mentioned, viz: on the first day of December, eighteen hundred and thirty-nine, and at divers times before and afterwards, during the said term of fourteen years mentioned in said letters patent secondly above mentioned, and before the purchase of this writ, at Bridgewater aforesaid, in the county of Plymouth, in said district of Massachusetts, unlawfully and wrongfully, and without the consent or allowance and against the will of the plaintiff, make and vend to others to be used, the said improvement, in violation and infringement of the exclusive right so secured to the plaintiff, by said letters patent secondly above mentioned as aforesaid, and contrary to the form of the statutes of the United States in said case made and provided: whereby the plaintiff has sustained great injury, and been deprived of great profit and advantage which he might and otherwise would have derived from said invention, and has sustained actual damage to the amount of five thousand dollars; and by force of the statutes aforesaid, an action hath accrued to him to recover the said actual damage, and such additional amount, not exceeding in the whole three times the amount of such actual damages, as the court may see fit to order and adjudge. Yet the said Joseph A. Hyde, George W. Bates, Samuel W. Bates, Philo Keith, Edwin Keith, Asa P. Keith, Asa Copeland, Ephraim H. Sprague, and Waldo Ames, though requested, have not, nor hath any or either of them paid the same, or any part thereof, to the plaintiff, but hath refused and refuses yet so to do, to the damage of the said Eleazer Carver, as he says, the sum of fifteen thousand dollars.

This action was entered at the October term, A. D. 1840, of this court, when the defendants appeared, by their attorney, and thence was continued to the present term; and now the said defts., by their attys., Fletcher and Phillips, come and defend, &c., when, &c., and for plea say they are not guilty in manner and form as the plaintiff hath alleged; and the plff. doth the like, by F. Dexter, atty. Issue being thus joined, the cause, after a full hearing, is committed to a jury sworn according to law to try the same, who, after hearing all matters and things concerning the same, return their verdict therein upon oath, that is to say: The jury find that the defendants are not guilty in manner and form as the plaintiff hath alleged.

It is therefore considered by the court that the said Joseph A. Hyde, George W. Bates, Samuel W. Bates, Philo Keith, Edwin Keith, Asa P. Keith, Asa Copeland, Ephraim H. Sprague, and Waldo Ames, recover against the said Eleazer Carver costs of suit, taxed at

Bill of Exceptions.

Be it remembered, that at the term of the Circuit Court of the United States for the first circuit, begun and holden at Boston,

within and for the District of Massachusetts, on the fifteenth day of October, in the year of our Lord one thousand eight hundred and forty, Eleazer Carver, of Bridgewater, in the County of Plymouth, and district aforesaid, manufacturer, brought his action of trespass upon the case against Joseph A. Hyde, George W. Bates, Samuel W. Bates, Philo Keith, Edwin Keith, Asa P. Keith, Asa Copeland, Ephraim H. Sprague and Waldo Ames, all of said Bridgewater, manufacturers, on which the said Carver declared against them, as by the record in said court remaining, and herewith exemplified, will appear; to which said action and declaration the said defendants appeared, and pleaded that they were not guilty, and thereof put themselves on the country; and thereupon issue was joined between the said parties; and the said action being continued to the then next term of said court, afterwards, at the term of said court, begun and holden at said Boston, on the fifteenth day of May, in the year of our Lord one thousand eight hundred and forty-one, the aforesaid issue came on to be tried by a jury duly returned, empannelled and sworn for that purpose, as by said record and exemplification will appear; and upon the trial of the said issue, the counsel for the plaintiff, to maintain and prove the said issue on his part; gave in evidence the said letters patent and specification, in his said declaration mentioned, in the words and figures following, to wit:

Letters Patent.

THE UNITED STATES OF AMERICA:

To all to whom the Letters Patent shall come.

Whereas, Eleazer Carver, of Bridgewater, Mass., has alleged that he has invented a new and useful improvement in the ribs of saw-gins, for ginning cotton, for which letters patent were granted, dated the 12th day of June, 1838, which letters patent are hereby cancelled, on account of a defective specification, which he states has not been or used before his application, has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor, or discoverer of the said improvement, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the treasury of the United States, the sum of fifteen dollars, and presented a petition to the commissioner of patents, signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose.

These are, therefore, to grant, according to law, to the said Eleazer Carver, his heirs, administrators or assigns, for the term of fourteen years, from the twelfth day of June, one thousand eight hundred and thirty-eight, the full and exclusive right and liberty

(B.)

Asa Copeland, jun's specification, annexed as an explanation of the drawing of the grate used by defts.

To all whom it may concern.

Be it known that I, Asa Copeland, jr., of Bridgewater, in the county of Plymouth and State of Massachusetts, have made certain improvements in the manner of constructing and affixing the ribs or grates of saw-gins for ginning cotton, and I do hereby declare that the following is a full and exact description thereof.

In the saw-gin, as ordinarily constructed, the cotton is liable to collect in the spaces between the ribs and around them, above the point where the saws operate, thus choking or clogging the grate and preventing the rising and free escape of the fibres and seed therefrom.

To obviate this inconvenience, instead of attaching the ribs by their upper ends directly to the part usually denominated the breast or grate fall, I, in general, extend a brace or arm out from near the upper ends of said ribs, by which to attach them to the breast, in such a manner as that they shall stand out from said breast, and leave a free space of a fourth of an inch, more or less, for the escape of the cotton. The attachment may be made to the front, bottom, or back of the breast; and the mode in which this is effected will admit of much variation, without departing from the general principle upon which the improvement is founded.

In the accompanying drawing, fig. I represents a section of the breast A, with a rib B, attached to it; C being one of the saws, D is a brace or arm extending out from the underside of *of* the rib, and attached by a screw to the under side of the breast at E.

I sometimes carry the end E. upon the back side of the breast, and screw it to that part, as shown by the dotted lines, or it may be carried up on the front and there attached.

The arm D, may be round or flat, where it leaves the rib B; and it should be made narrower than the ribs, say about two thirds of its width.

The top and B stands at the distance of one fourth of an inch, or nearly so, from the forepart of the breast, the distance increasing towards the extreme end, so as to remove all obstruction out of the way of the ascent of the fibres of cotton. In the above described arrangement, the teeth of the saw pass between the ribs at a point above the branching off of the arm D, as shown in fig. I; [but I sometimes omit this arm, and attach the rib in another manner to the front of the breast, in which case it may be constructed as shown in figure 2, in which F is a piece extending above the point or upper end of the rib, through which it is screwed to the front of the breast, it being so formed as to sustain the end B of the rib, at a distance

from the breast similar to the part B, in fig. I. G is a wing, or flat piece projecting out from the rib, and which is let into the breast; the whole of said wing is above the saws and the fibres pass freely up on either side of it, and escape with the seed at the top. Although this mode of construction has been found to answer a good purpose, that first described is preferred. Fig. 3 shows the form which I give to the faces or outsides of the ribs; A being a portion of the breast or grate fall, with two of the ribs attached thereto; at the part H, where the saw terminates, I widen them out, as shown in the drawing, so as to narrow the space between them, and then again narrow them off towards the point, to aid in affording an unobstructed rise and escape of the fibres and seed.

What I claim as my invention and improvement in the constructing and affixing the ribs of saw-gins for the ginning of cotton, is the so forming and affixing them to the "breast or grate fall, as that their upper ends shall stand off from the front of said breast, in the manner herein described, in order to allow of a free and uninterrupted rise and escape of the fibres and seed from the upper ends of said ribs; and this I claim, whether the said ribs be formed and attached precisely in the manner set forth, or in any other way which is substantially the same and by which a like result is obtained.

Witnesses: ASA COPELAND, Jr.
ROB'T T. PAINE,
T. G. HAUGHTON.

UNITED STATES OF AMERICA,
Massachusetts District, ss.

To Joseph A. Hyde, George W. Bates, Samuel W. Bates, Philo Keith, Edwin Keith, Asa P. Kieth, Asa Copeland, Ephraim H. Sprague and Waldo Ames, all of Bridgewater, in the District of Massachusetts, manufacturers and copartners, under the firm of Bates and Hyde & Co., greeting:

Whereas, there has issued from the Supreme Court of the United States a writ of error, bearing date on the ninth day of October, A. D. 1841, directed to the Judges of the Circuit Court of the United States, holden in and for the Massachusetts District, wherein it is suggested that in the record and process, and also in the rendering of judgment in a suit between Eleazer Carver, of Bridgewater, in the county of Plymouth, in the District of Massachusetts, manufacturer, as plaintiff, and you as defendants, in a plea of trespass on the case, manifest error has intervened to the great damage of the said plaintiff; and the said judges are by the said writ commanded, if judgment thereof be given, that under their seals, distinctly and openly, they send the record and process in the suit aforesaid, with all things cencerning them, together with the said writ, so that they have the same before the chief justice and the associate justices of

the Supreme Court of the United States, on the second Monday in January, A. D. 1838, at Washington, being the present seat of the National Government, that the record and process aforesaid, being inspected, they may cause to be done thereupon what of right ought to be done.

You, therefore, the said Joseph A. Hyde, George W. Bates, Samuel W. Bates, Philo Keith, Edwin Keith, Asa P. Keith, Asa Copeland, Ephraim H. Sprague and Waldo Ames, are hereby notified of said writ of error, and of the filing of the same as aforesaid, and cited to appear, if you see cause, at the said Supreme Court, to be holden as aforesaid, to make answer thereto.

Given under my hand and seal at Boston, this ninth day
[L. S.] of October, A. D. 1841, in the sixty-sixth year of the independence of the United States of America.

PELEG SPRAGUE,
Judge of the U. S. for the Dis. Mass.

We hereby acknowledge that due service of the foregoing citation was made.

GEO. W. BATES, *and others,*
By their Attorney,
WILLARD PHILLIPS.